

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 334 of 1997

with

CIVIL APPLICATION NO. 6166 of 1997.

with

APPEAL FROM ORDER No 335 of 1997

with

CIVIL APPLICATION NO.6204 of 1997.

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RANJITSING AGARSANG

Versus

JIVUBA JESANGJI POH KALUBHA      PATHUBHA GOHIL  
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Appearance:

1. Appeal from Order No. 334 of 1997  
    M/S THAKKAR ASSOC for Appellant.  
    MR HARESH N JOSHI for Respondent No. 1
  2. Appeal from OrderNo 335 of 1997  
    MS MEGHA JANI for Appellant  
    UNSERVED for Respondent No.1,3,4,5,6,7,8,9,10,  
    11,12,13,14,15,16 & 17.  
    SERVED BY DS for Respondent No. 2  
    M/S THAKKAR ASSOCIATES, for respondent No.18.
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CORAM : MR.JUSTICE M.S.SHAH

Date of Order: 03/09/97

ORAL ORDER

1. Both the appeals are admitted and taken up for final disposal today with the consent of the learned counsel for the appellants in the respective appeals and the parties likely to be affected by the orders proposed to be passed today.

2. Both these appeals are directed against the order

dated June 13,1997,passed by the Civil Judge ( S.D.),Khambhaliya, Dist : Jamnagar below Exh.7 in Special Civil Suit No.26 of 1996. Appeal No.334 of 1997 is filed by original defendant No.2 and Appeal No.335 of 1997 is filed by the original plaintiff. The parties are hereinafter referred to as per their position before the trial Court.

3. The suit has been filed by Jivuba Jesangji (plaintiff )through her son and power of attorney holder Kalubha Pathubha Gohil praying for partition of the properties left by her deceased father Jesangji Nathuji. It is the case of the plaintiff that these fields belonged to deceased Jesangji and no partition had ever taken place. As a daughter of the deceased, she is one of co-sharers and co-owners of the land. She hasalso prayed that in view of the fact that she has 1/6th share in the suit property, the defendants be restrained from transferring or alienating the suit land and also the defendants may be restrained from withdrawing the amounts of compensation of acquired lands.

4. By now some of the lands, which are subject matter of the suit, have been acquired/purchased by Essar Oil Co.Ltd. and the compensation is deposited with the Land Acquisition Officer. Earlier an amount of Rs.25,99,454/= was deposited with the Special Land Acquisition Officer, Jamnagar and the entire amount was withdrawn by three brothers of the plaintiff and their family members (respondent Nos. 8, 11, 12 and 14) leaving nothing for the plaintiff. Thereafter, second acquisition has taken place and an amount of Rs.31,23,298/= is deposited with the Special Land Acquisition Officer. The trial Court has passed the interim order in appeal for status quo to be maintained regarding the amount of Rs.31,23,298/=.

5. Ms.Jani,learned counsel for the plaintiff has submitted that the plaintiff has 1/6th share in the suit lands, and therefore, her 1/6th share in the amount of total compensation of Rs.57,22,752/= would work out Rs.9,53,792/=. Ms Jani submits that there is no reason as to why the plaintiff should be denied her 1/6th share and why she should not be permitted to withdraw the amount of her share i.e.Rs.9,53,792/=. She also states that her client is prepared to give up her claim in the other suit properties after she is permitted to withdraw the full amount of Rs.9,53,792/=.

6. On the other hand, Mr. Kavina learned counsel for original defendant Nos. 1,2 and 18 has submitted

that

(i) The lands were partitioned amongst four brothers ( i.e. Respondent No.1 Agarsang, Respondent No.7 Bahadursang, Respondent No.11 Togaji and Respondent No.14 Malji ) in the year 1958, and they were put in possession of the respective lands. The plaintiff had no share in the suit properties and that that is an issue yet to be decided at the stage of final decision of the suit, but if in the meantime, the plaintiff is permitted to withdraw the full amount, it would amount to decreeing the suit at this stage.

(ii) In any view of the matter, earlier the amount of Rs.25,99,454/= was disbursed on 4-5-1995 and 4-8-1995. The plaintiff deliberately did not raise any objection at that time, because the compensation amounts comprised in the aforesaid figure of Rs.25,99,454/= were collected by the three other brothers ( Respondent No.7- Bahadursang, Respondent No.11 Togaji and Respondent No.14 Malji ) and their sons ( Respondent No.8 Hemantsung Bahadursang and Respondent No.12 Pravinsing Togaji). Hence, it would be inequitable to give the plaintiff her entire alleged share from the compensation amounts made available upon acquisition of the lands of the fourth brother ( i.e. defendant No.1 Agarsung and his branch of the family i.e. defendant Nos. 2 to 6.).

(iii) The other three brothers ( defendant Nos. 7, 11 and 14 ) and the members of their branches of the family have not appeared before this Court, and, therefore, on account of their nonappearance, their alleged liability to pay the plaintiff the share from the award amounts recovered by them cannot be fastened upon defendant Nos. 1 to 6.

(iv) Survey No.356 was not mentioned in the list of suit lands and that was one of the parcels of land for which the total compensation of Rs.25,99,954/= was deposited.

(v) Defendant No.18 is represented by him and that defendant No.18 seeks no share from the amount of compensation lying with the Land Acquisition Officer.

7. In rejoinder, Ms. Jani suibmittes that since Jesangji Nathuji expired after commencement of the Hindu Succession Act, 1956, the plaintiff cannot be deprived of her share by the alleged partition, and, therefore, she must be paid her share. As regards the compensation of Rs.25,99,954/= withdrawn by the three brothers (

defendant Nos.7, 11 and 14 ) and their family members, she submits that the plaintiff would like to claim her share by filing a separate application before the trial Court.

As regards Survey No.356, she submits that on account of some illegible entry in the revenue record, Survey No.356 was erroneously read as Survey No.316 and in respect of that inadvertent error also the plaintiff would apply to the trial Court for amendment of the plaint.

8. Having heard the learned counsel for the parties, it appears to the Court that the ends of justice would be served, if the order under appeal passed by the trial Court is modified in terms of the following directions :-

(i) The trial Court shall deposit the amount of Rs.5,20,550/= ( i.e. 1/6 share in Rs. 31,23,298/=) in a Fixed Deposit with a nationalized bank. The fixed deposit account shall be opened in the joint name of the Nazir of the Civil Court, Khambhaliya and plaintiff Jivuba Jesangji. The periodical interest accruing on the above fixed deposit, at monthly intervals would be transmitted to the plaintiff by getting the same deposited in the bank account of the plaintiff at a nationalized bank near the village where the plaintiff is residing.

(ii) The remaining amount is permitted to be withdrawn by defendant Nos. 1 to 6.

(iii) The interim injunction granted by the trial Court against the transfer or alienation of the other lands shall continue till the disposal of the • suit.

(iv) In case the plaintiff moves the trial Court for directions regarding her share in the compensation amount of Rs.25,99, 454/= said to have been collected by the branches of defendant Nos. 7, 11 and 14 in the year 1995, the trial Court shall consider the same in accordance with law.

9. The appeals and the Civil Applications are disposed of in terms of the aforesaid directions with no order as to costs.

03-09-97 (M.S.Shah, J. )

Mithabhai.